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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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Maryland Casualty Company of Baltimore, Maryland,  
a corporation,

*Plaintiff in Error,*

vs.

ORCHARD LAND AND TIMBER COMPANY, a  
corporation,

*Defendant in Error.*

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**TRANSCRIPT OF RECORD**

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Upon Writ of Error to the District Court of the United  
States for the District of Oregon.

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**Filed**

FEB 24 1916

**F. D. Monckton,**  
Clerk.



No. \_\_\_\_\_

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*United States Circuit Court of Appeals for the Ninth  
Circuit.*

Maryland Casualty Company of Baltimore, a corporation,  
tion,

*Plaintiff in Error,*

vs.

Orchard Land and Timber Company, a corporation,

*Defendant in Error.*

**NAMES AND ADDRESSES OF THE ATTOR-  
NEYS OF RECORD.**

Wilbur, Spencer & Beckett,

Board of Trade Building, Portland, Oregon, for  
the Plaintiff in Error.

Clark, Skulason & Clark,

Yeon Building, Portland, Oregon, and Charles A.  
Hardy, Eugene, Oregon, for the Defendant in  
Error.

## CITATION ON WRIT OF ERROR.

United States of America,  
District of Oregon,—ss.

To Orchard Land & Timber Company, a corporation,  
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Orchard Land & Timber Company, is plaintiff, and Maryland Casualty Company, of Baltimore, Maryland, is defendant, plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 28th day of January in the year of our Lord, one thousand, nine hundred and sixteen.

R. S. BEAN,  
Judge.

United States of America,  
District of Oregon,—ss.

Due and timely service of the within Citation on  
Writ of Error, and the receipt of a duly certified copy

thereof, all at the City of Portland, in the District of Oregon, is hereby admitted.

Jan. 28th, 1916.

CLARK, SKULASON & CLARK,  
Attorneys for Plaintiff.

Filed January 29, 1916. G. H. Marsh, Clerk.

### WRIT OF ERROR.

*In the United States Circuit Court of Appeals for the  
Ninth District.*

Maryland Casualty Company, of Baltimore,  
Maryland, a corporation,

Plaintiff in Error,

vs.

Orchard Land & Timber Company, a corporation,

Defendant in Error.

THE UNITED STATES OF AMERICA,—ss.

THE PRESIDENT OF THE UNITED  
STATES OF AMERICA.

To the Judge of the District Court of the United States  
for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between Orchard Land & Timber Company, a corporation, Plaintiff and Defendant in Error, and Maryland Casualty Company, of Baltimore, Maryland,



a corporation, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD  
DOUGLAS WHITE,

Chief Justice of the Supreme Court of  
the United States this 28th day of  
January, 1916.

(Seal U. S. District Court,  
District of Oregon.)

G. H. MARSH,  
Clerk of the District Court of the  
United States for the District of  
Oregon.

Filed January 28th, 1916. G. H. Marsh, Clerk United  
States District Court, District of Oregon.

*In the District Court of the United States for the  
District of Oregon.*

MARCH TERM, 1915.

BE IT REMEMBERED, That on the 29th day of March, 1915, there was duly filed in the District Court of the United States for the District of Oregon, an Amended Complaint, in words and figures as follows, to-wit:

*In the District Court of the United States for the  
District of Oregon.*

AMENDED COMPLAINT.

ORCHARD LAND & TIMBER COMPANY, a  
corporation,

Plaintiff,

vs.

MARYLAND CASUALTY COMPANY of Bal-  
more, Maryland, a corporation,

Defendant.

For a cause of action against the defendant herein, the plaintiff alleges:

I.

That at all times herein mentioned, the plaintiff was, and now is, a corporation, duly organized, created and existing under and by virtue of the laws of the State of Oregon.

## II.

That at all times herein mentioned, the defendant was, and now is a corporation, duly organized, created and existing under the laws of the State of Maryland, and by its charter and ARTICLES OF INCORPORATION, authorized and empowered to transact a surety business, and to write, issue and put in force contracts of Employers' Liability Insurance; and during all the times herein mentioned, the said defendant was authorized to transact business in the State of Oregon, and to write, issue and put in force, contracts of insurance of the character stated.

## III.

On June 5th, 1912, and in consideration of the sum of \$140.00, then paid by the plaintiff to the defendant, the defendant did issue to the plaintiff its contract No. A-34208 by the terms of which, the said defendant did contract and agree to indemnify the plaintiff against loss from the liability imposed by law upon the plaintiff, for damages on account of bodily injuries, including death resulting therefrom, suffered by any employee of the plaintiff, while upon the premises, or upon the sidewalks, or other ways immediately adjacent thereto, provided for the use of the employees of the plaintiff or the public, and occupied by the plaintiff in the conduct of its business, within a period of 12 months beginning on the 5th day of June, 1912, and ending on the 5th day of June, 1913; and

It was further contracted and agreed, additionally that the kind or kinds of work, covered by the policy,

was work in and about the saw-mill and appurtenances, of the plaintiff located in Lane County, Oregon, and including employees whose duties required their presence in the mill or yards of the plaintiff.

#### IV.

It was further contracted and agreed by said contract of insurance, by and between the defendant and the plaintiff, that the contract liability of the defendant thereunder from any accident, resulting in bodily injury, including death resulting therefrom, to any one person, was \$5000.00; and in addition the defendant did contract and agree, at its own cost and expense, to investigate all accidents, and defend all suits of which notice was given to it, as by the terms of said contract of insurance provided, unless the defendant elected to settle any such claim or suit; and the said contract of insurance remained at all times in force during the period above stated.

#### V.

That on the 8th day of June, 1912, O. W. Dunn, was an employee of the plaintiff, and was employed in and about the aforesaid mill of the plaintiff, situated in Lane County, Oregon, engaged in and about the conveyor, or equipment, used to convey slabs from the saw-mill along a staging, or scaffolding, to a dump where the said refuse and slabs were to be and were burned. That the place where the said Dunn was working, was in and about the mill yard of the plaintiff; that on the said 8th day of June, 1912, and while so in the employ of the

plaintiff, and engaged in the aforesaid work, in and about the mill and yards of the plaintiff, the said Dunn was seriously injured.

## VI.

On October 9th, 1912, the said Dunn brought an action at law, in the Circuit Court of the State of Oregon, for Lane County, against this plaintiff, setting forth the injuries received, and praying for judgment against the plaintiff, in the sum of \$15,000.00, besides his costs and disbursements. That defendant was promptly notified of such injuries as required by the terms of said contract of insurance; when said action was brought defendant was promptly notified thereof, and the complaint and other papers in said cause was promptly transmitted to the defendant. The defendant did not settle said claim or action, but assumed entire charge and control of the conduct and defense thereof, under and pursuant to the terms of said contract of insurance, and in the name of this plaintiff, through its own Attorneys, the defendant did interpose and answer, to which answer the said Dunn interposed a reply, and thereupon the case being at issue, was duly and regularly brought on for trial and determination in the Circuit Court of Lane County, Oregon; that at all times the defendant, through its Agents and Counsel conducted and retained entire charge and control of the said cause, and the trial thereof. That thereafter such proceedings were had in said cause, that upon the 11th day of November, 1912, judgment in said cause was duly and regularly passed, rendered and entered in favor of the said Dunn,



and against this plaintiff, in the sum of \$7,500.00, and for his costs and disbursements, taxed and allowed in the sum of \$102.60.

## VII.

Thereafter the defendant declined to settle said claim and judgment or any part thereof, and took an appeal from said judgment to the Supreme Court of the State of Oregon, in the name of this plaintiff, the said defendant in truth and in fact, however, taking and retaining full charge and control of said cause, and the said appeal. Thereafter such proceedings were had in said cause upon appeal, that on December 9th, 1913, the said judgment was affirmed; that said judgment was never at any time modified, vacated or set aside.

## VIII.

That on or about the 11th day of November, 1914, the plaintiff settled said claim, and paid said judgment, and procured a release and satisfaction thereof. That plaintiff has duly kept and performed each and every term, stipulation and condition of said contract of insurance, to be by it kept and performed. That said plaintiff settled and procured a discharge of said judgment for the sum of \$7,602.60; that by reason of the aforesaid facts, plaintiff has suffered as a result of the injuries and the judgment rendered in favor of the said Dunn, in the sum of \$7,602.60. That by the terms of said contract of insurance, the defendant contracted and agreed to and with the plaintiff, to compensate, indemnify and reimburse the plaintiff in the sum of \$5,000.00, because of loss

imposed upon plaintiff by the said injuries, and the judgment rendered as a result thereof.

IX.

That defendant has failed, neglected and refused to indemnify the plaintiff in said sum of \$5,000.00, or any part thereof. That by reason of the facts aforesaid, defendant is indebted to plaintiff, in the sum of \$5,000.00.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of \$5,000.00, with interest thereon at the legal rate, and its costs and disbursements herein.

CLARK, SKULASON & CLARK,

Attorneys for Plaintiff.

District of Oregon,

County of Multnomah,—ss.

I, Alfred P. Dobson, being first duly sworn, depose and say that I am the secretary of plaintiff corporation in the above entitled action; and that the foregoing amended complaint is true, as I verily believe.

ALFRED P. DOBSON,

Subscribed and sworn to before me this 27th day of March, 1915.

HERMAN MOELLER,

(Seal) Notary Public for the State of Oregon.

District of Oregon,

County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 29th day of March, 1915.

S. C. SPENCER,

of Attorneys for Defendant.

Filed March 29, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 17th day of July, 1915, there was duly filed in said Court and cause, an Answer, in words and figures as follows, to wit:

### ANSWER.

The defendant for answer to plaintiff's amended complaint, alleges, admits and denies as follows:

#### I.

Admits the allegations contained in Paragraph I thereof.

#### II.

Admits the allegations contained in Paragraph II thereof.

#### III.

Admits the allegations contained in Paragraph III thereof.

#### IV.

Admits the allegations contained in Paragraph IV thereof.

#### V.

Admits the allegations contained in Paragraph V of said amended complaint.

#### VI.

Admits the allegations contained in Paragraph VI of *said amended complaint*.



VII.

Admits the allegations contained in Paragraph VII of said amended complaint.

VIII.

Denies each and all of the allegations contained in Paragraph VIII of said amended complaint.

IX.

The defendant denies each and all of the allegations contained in Paragraph IX of said plaintiff's amended complaint, except that it admits that it has not paid the said plaintiff the sum of \$5000.00 or any other sum or amount.

For a further and separate answer and defense to said amended complaint, this defendant alleges:

I.

That during all the times hereinafter mentioned the plaintiff was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon.

II.

That during all the times hereinafter mentioned the defendant was and is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and by its charter and Articles of Incorporation was and is authorized and empowered to write, issue and put in force contracts of employers' liability insur-

ance and during said time was authorized to transact business in the State of Oregon.

### III.

That on June 5, 1912, and in consideration of the sum of \$140.00 then paid by plaintiff to the defendant, the defendant did issue to the plaintiff its employers' liability policy of insurance No. A 34208, by the terms of which, among other things, said defendant did contract and agree to indemnify the plaintiff against loss from liability imposed by law upon the plaintiff for damages on account of bodily injuries, including death, resulting therefrom, suffered by any employee of the plaintiff while upon the premises or upon the sidewalks or other ways immediately adjacent thereto, provided for the use of the employees of the plaintiff or the public and occupied by the plaintiff in the conducting of its business referred to in said policy within a period of twelve months, beginning with the 5th day of June, 1912, and ending on the 5th day of June, 1913, and it was further contracted and agreed additionally that the kind or kinds of work covered by the policy was work in and about the saw mill and appurtenances of the plaintiff located in Lane County, Oregon, and included employees whose duties required their presence in the mill or yards of the plaintiff.

### IV.

It was further contracted and agreed by said contract of insurance, by and between the defendant and the plaintiff, that the contract liability of the defendant thereunder from any accident, resulting in bodily in-

jury, including death resulting therefrom, to any person, was \$5,000.00; and in addition the defendant did contract and agree, at its own cost and expense, to investigate all accidents, and defend all suits of which notice was given, to wit, as by the terms of said contract of insurance provided, unless the defendant elected to settle any such claim or suit; and the said contract of insurance remained at all times in force during the period above stated.

## V.

That on the 8th day of June, 1912, O. W. Dunn, was an employee of the plaintiff, and was employed in and about the aforesaid mill of the plaintiff, situated in Lane County, Oregon, engaged in and about the conveyor, or equipment, used to convey slabs from the saw-mill along a staging or scaffolding, to a dump where the said refuse and slabs were to be and were burned. That the place where the said Dunn was working, was in and about the mill yard of the plaintiff; that on the said 8th day of June, 1912, and while so in the employ of the plaintiff, and engaged in the aforesaid work, in and about the mill and yards of the plaintiff, the said Dunn was seriously injured.

## VI.

On October 9th, 1912, the said Dunn brought an action at law, in the Circuit Court of the State of Oregon, for Lane County, against this plaintiff, setting forth the injuries received, and praying for judgment against the plaintiff, in the sum of \$15,000.00 besides his costs and disbursements. That defendant was promptly notified

of such injuries as required by the terms of said contract of insurance; when said action was brought defendant was promptly notified thereof, and the complaint and other papers in said cause was promptly transmitted to the defendant. The defendant did not settle said claim or action, but assumed entire charge and control of the conduct and defense thereof, under and pursuant to the terms of said contract of insurance, and in the name of this plaintiff, through its own Attorneys, the defendant did interpose an answer, to which answer the said Dunn interposed a reply, and thereupon the case being at issue, was duly and regularly brought on for trial and determination in the Circuit Court of Lane County, Oregon; that at all times the defendant, through its Agents and Counsel conducted and retained entire charge and control of the said cause, and the trial thereof. That thereafter such proceedings were had in said cause, that upon the 11th day of November, 1912, judgment in said cause was duly and regularly passed, rendered and entered in favor of the said Dunn, and against this plaintiff, in the sum of \$7,500.00, and for his costs and disbursements, taxed and allowed in the sum of \$102.60.

## VII.

Thereafter the defendant declined to settle said claim and judgment or any part thereof, and took an appeal from said judgment to the Supreme Court of the State of Oregon in the name of this plaintiff, the said defendant in truth and in fact, however, taking and retaining full charge and control of said cause, and the said appeal. Thereafter such proceedings were had in said cause upon

appeal, that on December 9th, 1913, the said judgment was affirmed; that said judgment was never at any time modified, vacated or set aside.

### VIII.

That a copy of said policy hereinabove referred to is hereunto attached hereby referred to marked Exhibit "A" and made a part hereof, and said defendant alleges that it had no other or different or other policy or agreement with the said plaintiff than as is shown and set out in said Exhibit "A." That among other things said policy shown by Exhibit "A" provides as follows:

"The Maryland Casualty Company, herein called Company, hereby agrees to indemnify the Orchard Land & Timber Company of Cottage Grove, Lane County, State of Oregon, herein called Assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death, resulting therefrom, accidentally suffered by any employee of the Assured"

and this defendant alleges that said plaintiff has not sustained any loss for any liability imposed by law upon the assured for damages on account of bodily injuries accidentally suffered by any employee of the Assured, or by the said O. W. Dunn referred to in said plaintiff's amended complaint, and said defendant alleges that said plaintiff did not, on or about the 11th day of November, 1914, or at any other time, pay the judgment referred to in said plaintiff's amended complaint, and in Paragraph VIII thereof.



WHEREFORE, having fully answered said plaintiff's amended complaint, this defendant prays that it go hence without day, and that said plaintiff's amended complaint and cause of action attempted to be set up herein be dismissed, and for its costs and disbursements herein.

WILBUR, SPENCER & BECKETT,  
Attorneys for Defendant.

M. E. Form No. 1.

*W. A.*

## MARYLAND CASUALTY COMPANY

Home Office—Baltimore

### Application for Manufacturers' Employers Policy

H. O. No.....	Risk begins June 5, 1912	Policy No. A 34208.
Ren. H. O. No...	Termination, June 5, 1913.	Renewal of A.
D. R. Folio.....	Liability Limits:	Pay Roll, \$7000.
A. L. Folio.....	One Person, \$5000.00	Rate, \$2.00.
	One Accident, \$10,000.00.	Premium, \$140.00.

1. Name of Assured: The Orchard Land and Timber Co.

2. Address of Assured: Cottage Grove, Oregon.

3. Compensation for last year for all employes was \$.....

4. Are there any elevators on the premises? None.

5. Are there any stamping presses? No.

If so, how many?.....Of what nature and for what purpose?.....

6. Are there any explosives used? No. Is so, what?.....

7. Has any company ever cancelled or refused to issue Liability, Elevator, Fly-Wheel or Boiler Insurance on this risk? No.

If so, when? . . . . What company? . . . . Why? . . . .

8. What company has insured this risk during the past year? Employers'.

9. The minimum premium under this Policy is \$25.00.

10. Rate of brokerage paid on this risk is . . . . .%

Approved at H. O. . . . .

We (I) hereby certify that in our (my) best judgment the applicant for this insurance is entirely responsible, that the moral hazard is the best, and recommend the risk

Rogers, Hart Gibson Co., General Agent.

Dated at Portland, Oregon, June 5, 1912.

Broker or Sub-Agent. . . . .

(OVER)

## SCHEDULE.

Kind or Kinds of Work Covered by Policy.	Place or Places Where Such Work Is to Be Done.	Estimated Compensation for Such Work for Period of Policy.	Rate on Which Initial Premium is Based and on Which Final Premium Will Be Adjusted.	Initial Premium.
Sawmill including all employees whose duties require their presence in mill and yard.	Near Divide, Lane County, Oregon.	\$7000.00	\$2.00	\$140.00

The estimated compensation includes that of all persons employed, (whether compensated by salary, wages, for piecework, overtime, or allowances, and whether paid in cash in whole or in part, in board, store certificates, merchandise, credits, or any other substitute for cash,) except that of the Assured himself, if an individual; any member of the firm, if the Assured be a firm; the President, Vice-President, Secretary and Treasurer, if the Assured be a corporation. Drivers and drivers' helpers, if they are covered by a concurrent Teams Insurance Policy with this Company, are also excluded.



Lia. Form No. 100

ENDORSEMENT.

Dated June 5, 1912.

It is hereby understood and agreed, unless specifically endorsed hereon, that this Policy does not cover any accident occurring in or upon any elevator or hoist, or in any elevator well or hoistway, or while entering or leaving any elevator or hoist owned or operated by assured.

Subject otherwise to all the terms of the Policy.

Attached to and forming part of Manufacturers Employers Policy No. A 34208 issued by the Maryland Casualty Company, of Baltimore, Md., to The Orchard Land & Timber Co., of Cottage Grove, State of Oregon.

Not valid until countersigned by

JNO. T. STONE,

President.

.....

General Agent.

Misc. Form I. 20m.

ENDORSEMENT.

Dated June 5, 1912.

It is understood and agreed that lines 16 & 17 of the within Policy are amended by striking out the words "except that the assured may provide at the time of the accident, at the expense of the Company such immediate surgical relief as is imperative."

Attached to and forming part of Manufacturers' Employers Policy No. A 34208 issued by the Maryland

Casualty Company, of Baltimore, Md., to The Orchard Land & Timber Co., of Cottage Grove, State of Oregon.

Not valid until countersigned by

JNO. T. STONE,

President.

.....

General Agent.

In consideration of ..... Dollars (\$.....) initial premium, which is based on the estimated compensation set forth in the Schedule below, and which premium is calculated at the rate or rates per \$100, of said compensation, named in the Schedule below, and is to be adjusted as stated below, at the same rate or rates, after the termination of this Policy, on the actual compensation earned during the policy period, the Maryland Casualty Company, of Baltimore, herein called the Company, hereby agrees to indemnify....., of....., County of....., State of....., herein called the Assured, against loss from the liability imposed by law upon the Assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any employe of the Assured while upon the premises or upon the sidewalks or other ways immediately adjacent thereto, provided for the use of the employes or the public, occupied by the Assured in the conduct of the business and at the places mentioned in the Schedule below; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of .....months, beginning on the ..... day of .....191..., at noon, and ending on the ..... day of .....191..., at noon, Standard Time, at the place where this policy has been countersigned.

The Company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to .....Dollars (\$.....), and, subject to the same limit for each person, the Company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to .....Dollars (\$.....).

In addition to these limits the Company will, at its own costs (court costs, and all interest accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the Company's liability as herein before expressed, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as hereinafter required, unless the Company shall elect to settle the claim or suit.

This Policy does not cover any accident to, or caused by, any child employed by the Assured contrary to law, or any child employed under fourteen (14) years of age where no statute restricts the age of employment. Additions to, or alterations in, or the construction of, any building, or structure, or plant are not covered under this Policy; nor is the wrecking or demolition of any building, or structure, or plant or any part thereof; but ordinary repairs when made by the regular employes of the Assured are covered.

Immediate written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the Home Office of the Company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses incurred by the Assured, unless such settlements or expenditures are first specifically authorized in writing by the Company; except that the Assured may provide at the time of the accident, at the expense of the Company, such immediate surgical relief as is imperative.

The estimated compensation includes, and the adjustment of the same will include, all compensation of every kind earned by all officials and employes, except the following persons: the Assured himself, if an individual; any member of the firm, if the Assured be a firm; the President, Vice-President, Secretary and Treasurer, if the Assured be a corporation.

In consideration of such exclusion from the estimated compensation and adjustment of same, accidents to persons so excluded are not covered under this Policy, but accidents caused by persons so excluded are covered hereunder.

The compensation of drivers and drivers' helpers is excluded from the estimated compensation and adjustment of same if they are covered by a concurrent Teams Insurance Policy with this Company. Drivers and drivers' helpers if included in the payroll, are covered wherever they may be.

Within sixty (60) days after the termination of the policy period the Assured shall furnish the Company a statement of all compensation of every kind earned by all employes during the policy period. An authorized representative of the Company shall have the right and

opportunity to examine the books and records of the Assured as respects such compensation, if said examination be made within twelve (12) months after the termination of the Policy.

This Policy may be cancelled by either the Company or the Assured at any time by not less than five (5) days written notice to the other, stating when the cancellation shall be effective. If cancelled by the Company, the Company shall be entitled to the earned premium pro rata when determined. If cancelled by the Assured, unless the Assured has retired from business, the Company shall be entitled to the earned premium, calculated at short rates in accordance with the table printed on the back of this Policy. In either case the earned premium shall be computed on the entire compensation of all employes for the full original policy period, as indicated by the actual compensation earned by all employes during the time the Policy shall have been in force. The Company's check mailed to the address of the Assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all employes of the Assured during the period the Policy shall have been in force shall have been furnished to the Company by the Assured.

---

It is understood and agreed, unless specifically endorsed hereon, that this Policy does not cover any obligation assumed by or imposed upon the Assured by any Workmen's Compensation Law, Agreement or Plan.



United States of America,  
District of Oregon,  
State of Oregon,  
County of Multnomah,—ss.

I, S. C. Spencer, being first duly sworn, say: That I am one of Defendant's Attorneys in the above entitled suit; that I have read the foregoing answer and know the contents thereof, and that the same is true of my own knowledge except as to matters therein stated upon information and belief, and as to such matters I believe the same to be true. That I make this affidavit because none of the principal officers of said defendant reside in or are within the State of Oregon.

S. C. SPENCER,

Subscribed and sworn to before me this 16th day of

July, 1915.  
(Seal)

H. B. BECKETT,  
Notary Public for Oregon.

My Notarial Commission expires April 16, 1916.

United States of America,  
District of Oregon,—ss.

Due and timely service of the within Answer and the receipt of a duly certified copy thereof, all at the city of Portland, in the District of Oregon, is hereby admitted.

CLARK, SKULASON & CLARK,  
Attorneys for Plff.

Filed July 17, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 19th day of July, 1915, there was duly filed in said court, and cause, a Reply, in words and figures as follows, to wit;

REPLY.

Comes now the plaintiff and for its reply to the further and separate answer and defense contained in the answer of the defendant, alleges:

I.

Admits all of the allegations of said further and separate answer and defense except lines 3 to 12 both inclusive, on the last page of said answer wherein the defendant in substance alleges that the plaintiff has not sustained any loss on account of the injuries suffered by the plaintiff's employe, O. W. Dunn, and wherein the defendant alleges that the plaintiff has not paid the judgment mentioned in the pleadings herein, which portion, and the whole thereof, this plaintiff denies.

WHEREFORE plaintiff prays for judgment as demanded in the complaint.

CLARK, SKULASON & CLARK,

Attorneys for Plaintiff.

District of Oregon,

County of Multnomah,—ss.

I, Alfred P. Dobson, being first duly sworn, depose and say that I am the secretary of plaintiff corporation in the above entitled cause; and that the foregoing reply is true, as I verily believe.

ALFRED P. DOBSON,

Subscribed and sworn to before me this 19th day of July, 1915.

(Seal)

ETHEL C. GRAHAM,  
Notary Public for the State of Oregon.

District of Oregon,  
County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this      day of July, 1915.

S. C. SPENCER,  
Of Attorneys for Defendant.

Filed July 19, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on the 18th day of October, 1915, there was duly filed in said court, and cause, Findings of Fact and Conclusions of Law in words and figures as follows, to wit;

## FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause being at issue, and coming on regularly for final hearing and determination before the Court without a jury, (trial by jury being waived by written stipulation signed by the parties through their respective attorneys, and filed), on the 11th day of October, 1915, and was tried upon that day, upon the pleadings, proofs and arguments of the respective parties.

Charles A. Hardy, and Clark, Skulason & Clark, appeared as Attorneys for the plaintiff, and Wilbur,



Spencer and Beckett, appeared as Attorneys for the defendant.

At the conclusion of said trial, the Court not then being fully advised in the premises, took said cause under advisement, and upon the 18th day of October, 1915, being then fully advised in the premises, the Court did render its decision in said cause in favor of the plaintiff and against the defendant for the relief prayed for in the complaint.

And the Court now finds that by reason of all the matters and things set forth in the complaint, the plaintiff, Orchard Land & Timber Company, suffered and sustained damages in the sum of \$5,000.00, together with interest thereon at the rate of 6% per annum from December 14, 1914, the date of the filing of the complaint herein, to this date, amounting to \$246.50.

And as a conclusion of law, the Court finds that the plaintiff, Orchard Land & Timber Company, is entitled to judgment against the defendant Maryland *Casualty* Company of Baltimore, for the sum of \$5,246.50 besides the costs and disbursements of this action.

Let judgment be entered accordingly.

Dated this 18th day of October, 1915.

R. S. BEAN,  
Judge.

Filed October 18, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 18th day of October, 1915, the same being the 91st judicial day of the regular July, 1915, term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

### JUDGMENT.

Based upon the Findings of Fact and Conclusions of Law filed and entered herein and on motion of Mr. B. G. Skulason of counsel for the plaintiff, in the above entitled cause, for judgment in accordance with the said findings,

IT IS CONSIDERED that said plaintiff do have and recover of and from said defendant, the Maryland Casualty Company of Baltimore, the sum of \$5246.50, together with its costs and disbursements herein taxed at \$20.40, and that it have execution therefor.

And afterwards, to wit, on the 19th day of October, 1915, there was duly filed in said court, and cause, a Stipulation waiving trial by jury, in words and figures as follows, to wit;

### STIPULATION WAIVING TRIAL BY JURY.

It is stipulated and agreed by and between the parties hereto, by their respective attorneys, that a trial by jury of the above entitled cause is hereby waived, and the cause may be tried to the Court without the intervention of a jury.

Dated this 11th day of October, 1915.

CLARK, SKULASON & CLARK,  
Attorneys for Plaintiff.

WILBUR, SPENCER & BECKETT,  
Attorneys for Defendant.

Filed October 19, 1915, G. H. Marsh, Clerk.

And afterwards, to wit, on Thursday, the 21st day of October, 1915, the same being the 94th judicial day of the regular July, 1915, term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER EXTENDING TIME TO FILE MO-  
TION FOR NEW TRIAL AND BILL OF  
EXCEPTIONS AND STAYING-  
EXECUTION.

Upon motion of the defendant,

IT IS HEREBY ORDERED that the defendant have to and including the 15th day of November, 1915, within which to prepare and file its motion for a new trial, and within which to prepare and file its Bill of Exceptions herein, and

IT IS FURTHER ORDERED that during said time that execution be stayed upon the judgment in the above entitled action.

And afterwards, to wit, on the 13th day of November, 1915, there was duly filed in said court, and cause, a Motion for New Trial, in words and figures as follows, to wit;

### MOTION FOR NEW TRIAL.

The defendant moves the Court for an order to set aside the judgment heretofore entered in the above entitled action, and for a new trial, upon the ground and for the reason:

#### I.

Insufficiency of the evidence upon the trial to justify the findings of the Court, and the judgment entered thereupon.

#### II.

That the Findings, Conclusions of Law and Judgment are against the law.

WILBUR, SPENCER & BECKETT,

Attorneys for Defendant.

United States of America,  
District of Oregon,—ss.

Due and timely service of the within Motion for a New Trial and the receipt of a duly certified copy thereof, all at the city of Portland in the District of Oregon, is hereby admitted.

CLARK, SKULASON & CLARK,

Attorney for Plaintiff.

Filed November 13, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Saturday, the 13th day of November, 1915, the same being the 12th judicial day of the regular November, 1915, term of said court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

**ORDER EXTENDING TIME TO FILE BILL  
OF EXCEPTIONS AND STAYING EX-  
ECUTION.**

Upon motion of the defendant

**IT IS HEREBY ORDERED** that the defendant have to and including December 1st, 1915, within which to prepare and file its Bill of Exceptions herein, and

**IT IS FURTHER ORDERED** that during said time that execution be stayed upon the judgment in the above entitled action.

Dated at Portland, Oregon, this 13th day of November, 1915.

**CHAS. E. WOLVERTON,**

Judge.

Filed November 13, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 29th day of November, 1915, the same being the 24th judicial day of the regular November, 1915, term of said court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

**ORDER EXTENDING TIME TO FILE BILL  
OF EXCEPTIONS AND STAYING EX-  
ECUTION.**

Upon motion of the defendant,

**IT IS HEREBY ORDERED** that the defendant have to and including January 15th, 1916, within which to prepare and file its Bill of Exceptions herein, and

**IT IS FURTHER ORDERED** that during said time that execution, be stayed upon the judgment in the above entitled action.

Dated at Portland, Oregon, this 29th day of November, 1915.

**CHAS. E. WOLVERTON,**  
Judge.

Filed November 29, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Friday, the 14th day of January, 1916, the same being the 65th judicial day of the regular November, 1915, term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

**ORDER EXTENDING TIME TO FILE BILL  
OF EXCEPTIONS AND STAYING EX-  
ECUTION.**

Based upon the stipulation heretofore entered into by and between the parties to the above entitled action, through their respective attorneys:



IT IS HEREBY ORDERED that the defendant have twenty (20) days additional time within which to prepare and file its Bill of Exceptions herein, and

IT IS FURTHER ORDERED that during said time that execution be stayed upon the judgment in the above entitled action.

Dated at Portland, Oregon, this 14th day of January, 1916.

R. S. BEAN,  
Judge.

Filed January 14, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 17th day of January, 1916, the same being the 67th judicial day of the regular November, 1916 term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

### ORDER DENYING MOTION FOR NEW TRIAL.

This cause was submitted to the Court upon written briefs on the motion of the defendant to set aside the judgment and for a new trial herein, said plaintiff appearing by Mr. B. G. Skulason, of counsel, and the defendant by Mr. T. C. Howell, of counsel: On consideration whereof, IT IS ORDERED AND ADJUDGED that said motion be, and the same hereby is, denied.

And afterwards, to wit, on the 26th day of January, 1916, there was duly filed in said court, and cause, a Petition for Writ of Error, in words and figures as follows, to wit;

### PETITION FOR WRIT OF ERROR.

The Maryland Casualty Company, defendant herein, says:

That on the 18th day of October, 1915, this Court entered judgment herein in favor of the plaintiff and against the defendant for the sum of FIVE THOUSAND TWO HUNDRED AND FORTY-SIX and 50-100 (\$5246.50) DOLLARS, and costs and disbursements in said action taxed at \$20.40, in which judgment, and the proceedings had prior and subsequent thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more fully appear in detail from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a Writ of Error may issue in its behalf to the United States Circuit Court of Appeals for the 9th Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to said Circuit Court of Appeals.

WILBUR, SPENCER & BECKETT,

Attorneys for Defendant.



United States of America,  
District of Oregon,—ss.

Due and timely service of the within Petition for Writ of Error and the receipt of a duly certified copy thereof, all at the city of Portland, in the District of Oregon, is hereby admitted.

CLARK, SKULASON & CLARK,

Attorney for Plaintiff.

Filed January 26, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 26th day of January, 1915, there was duly filed in said court, and cause, an Assignment of Errors, in words and figures as follows, to wit;

### ASSIGNMENT OF ERRORS.

The defendant, above named, and in connection with its petition for writ of error in the above entitled action, suggests that there was error on the part of the Circuit Court of the United States for the District of Oregon, in regard to the matters and things hereinafter set forth, and defendant makes this its assignment of errors.

#### I.

The Court erred in signing and causing to be filed what is termed Findings of Fact and Conclusions of Law without any notice to this defendant.

#### II.

The Court erred in not making Findings of Fact and Conclusions of Law in this cause covering the issues presented by the pleadings in this action.

## III.

The Court erred in making the so-called Findings of Fact because there was no evidence and not sufficient evidence to justify and support the said socalled Findings of Fact.

## IV.

The Court erred in signing the Conclusion of Law that it did in this cause because the evidence and findings were not sufficient to justify or support or authorize the same.

## V.

The Court erred in entering judgment in this matter in favor of the plaintiff and against the defendant because there was no evidence to justify the same.

## VI.

The Court erred upon the trial of this cause in rendering judgment against said defendant and in favor of said plaintiff for any sum whatever.

## VII.

The Court erred in not granting defendant a new trial in this action, which is as follows:

“The Defendant moves the Court for an order to set aside the judgment heretofore entered in the above entitled action, and for a new trial, upon the ground and for the reason:

I.

Insufficiency of the evidence upon the trial to justify the Findings of the Court, and the judgment entered thereupon.

II.

That the Findings, Conclusions of Law and Judgment are against the law."

WHEREFORE, the said plaintiff, plaintiff in error, prays that the judgment of the District Court of the United States for the District of Oregon, in the above entitled cause be reversed and such directions be given that full force and efficiency may inure to defendant by reason of the facts set out in its answer filed in this cause.

WILBUR, SPENCER & BECKETT,

Attorneys for Defendant.

United States of America,  
District of Oregon,—ss.

Due and timely service of the within Assignment of Errors and the receipt of a duly certified copy thereof, all at the city of Portland in the District of Oregon, is hereby admitted.

CLARK, SKULASON & CLARK,

Attorney for Plaintiff.

Filed January 26, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on Wednesday, the 26th day of January, 1916, the same being the 75th judicial day of

the regular November, 1915, term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

**ORDER ALLOWING WRIT OF ERROR AND  
FIXING SUPERSEDEAS BOND.**

On this 26th day of January, 1916, the above named defendant, by Wilbur, Spencer & Beckett its attorneys, filed herein and presented to the Court its petition praying for the allowance of a Writ of Error intended to be urged by defendant, praying also that the transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 18th day of October, 1915, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Judicial Circuit, presenting therewith its Assignment of Errors, and also praying that an order be made fixing the amount of the supersedeas bond, and for such other and further proceedings as may appear proper in the premises.

On consideration whereof the Court DOES HEREBY ALLOW the Writ of Error and fixes the amount of said supersedeas bond at \$7500.00.

Dated at Portland, Oregon, January 26, 1916.

R. S. BEAN,  
Judge.

Filed January 26th, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 26th day of January, 1916, there was duly filed in said court, and cause, a supersedeas bond, in words and figures as follows, to wit;

### SUPERSEDEAS BOND.

#### KNOW ALL MEN BY THESE PRESENTS:

That we, the defendant above named, MARYLAND CASUALTY COMPANY of Baltimore, Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, as Principal, and the OREGON SURETY & CASUALTY COMPANY, of Portland, Oregon, a corporation organized and existing under and by virtue of the laws of the State of Oregon, as Surety, are held and firmly bound unto the above named plaintiff, ORCHARD LAND & TIMBER COMPANY, an Oregon corporation, in the sum of SEVEN THOUSAND FIVE HUNDRED (\$7,500) DOLLARS for the payment whereof well and truly to be made until the said plaintiff above named said Maryland Casualty Company and said Oregon Surety & Casualty Company bind themselves, their successors and assigns jointly and severally by these presents.

WHEREAS, lately, at a term of the Circuit Court of the United States, for the district of Oregon, in an action pending in said Court between Orchard Land & Timber Co. as plaintiff and the Maryland Casualty Company, as defendant, a judgment was rendered against said defendant and in favor of said plaintiff, and the said defendant having obtained a writ of error, and filed a copy thereof in the clerk's office of said Court, to



reverse the judgment in the aforesaid action, and a Citation directed to the said plaintiff and admonishing it to be and appear at the next session of the United States Circuit Court of Appeals, for the Ninth Circuit.

NOW, THEREFORE, the condition of the above obligation is such that if the defendant, the MARYLAND CASUALTY COMPANY, shall prosecute said Writ of Error to effect and answer all damages and costs, if it fails to make good its plea, that the above obligation is void; otherwise the same shall be and remain in full force and virtue.

IN WITNESS WHEREOF, the said MARYLAND CASUALTY COMPANY, a corporation, and the said OREGON SURETY & CASUALTY COMPANY, a corporation, have caused these presents to be executed this 27th day of January, 1916.

MARYLAND CASUALTY COMPANY,  
Principal.

By Wilbur, Spencer & Beckett, Its Attorneys.

OREGON SURETY & CASUALTY COMPANY,  
Surety.

By R. W. Wilbur, Vice-President.

WILBUR, SPENCER & BECKETT,  
Counsel.

DOOLEY & CO.  
General Agents.

Examined and approved this 28th day of January,  
1916.

R. S. BEAN,  
Judge.



United States of America,  
District of Oregon,—ss.

Due service of the within bond and the receipt of a duly certified copy thereof, all at the city of Portland, in the District of Oregon, is hereby admitted.

Jan. 28, 1916.

CLARK, SKULASON & CLARK,

Attorney for Plaintiff.

Filed January 28, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on the 3rd day of February, 1916, there was duly filed in said court, and cause, a Bill of Exceptions, in words and figures as follows, to wit;

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the 11th day of October, 1915, the above entitled action came on regularly for trial in the above entitled court, before the Honorable R. S. Bean, District Judge; a jury having been waived by stipulation of the parties to the above entitled action, the plaintiff appearing by its attorneys, Chas. A. Hardy and Clark, Skulason & Clark, the defendant appearing by its attorneys, Wilbur, Spencer & Beckett.

After the opening statements of the respective counsel, certain evidence was taken, and "Exhibits A and B" were introduced in evidence. A full, complete and correct transcript of said evidence and said exhibits are hereto attached, hereby referred to, marked "Exhibit X,"

and included in and made a part of this Bill of Exceptions.

After the evidence was all introduced, arguments of counsel was heard for both parties, and the Judge not being fully advised in the premises took said case under advisement, and thereafter and on the 18th day of October, 1915, rendered an oral opinion in words and figures as follows:

Portland, Oregon, October 18, 1915.

“R. S. Bean, District Judge:

((ORAL))

The case of the Orchard Land & Timber Co. vs. the Maryland Casualty Company of Baltimore is an action to recover on an indemnity policy, by the terms of which the insurance company agreed to indemnify the plaintiff against loss or damage on account of injury to its employes. An employe was injured, sued the company, recovered a judgment and subsequently the plaintiff satisfied this judgment by giving its note to the injured party, and satisfied the judgment of record, and the question presented on this trial is whether this note and the satisfaction of the judgment amount to a payment within the meaning of the policy and entitle the plaintiff to recover, or whether it is necessary that it should pay the judgment in coin before it is entitled to recover in this action.

Now the authorities, as far as I have been able to examine them, indicate that where a note, as in this case,

was given and received in payment of the judgment that it amounts to a payment within the meaning of the policy and entitles the plaintiff to recover, and such will be the finding in this case."

Thereafter, and on the 18th day of October, 1915, there was prepared by the attorneys for the plaintiff and presented to the Judge, without any notice to the attorneys for the defendant, the following Findings of Fact and Conclusions of Law and Judgment, which were signed by the said Trial Judge, to wit:

"This cause being at issue, and coming on regularly for final hearing and determination before the Court without a jury, (trial by jury being waived by written stipulation signed by the parties through their respective attorneys, and filed), on the 11th day of October, 1915, and was tried upon that day, upon the pleadings, proofs and arguments of the respective parties.

Charles A. Hardy, and Clark, Skulason & Clark, appeared as Attorneys for the plaintiff, and Wilbur, Spencer & Beckett, appeared as Attorneys for the defendant.

At the conclusion of said trial, the Court not then being fully advised in the premises, took said cause under advisement, and upon the 18th day of October, 1915, being then fully advised in the premises, the Court did render its decision in said cause in favor of the plaintiff and against the defendant for the relief prayed for in the complaint.

And the Court now finds that by reason of all the matters and things set forth in the complaint, the plain-

tiff, Orchard Land & Timber Company, suffered and sustained damages in the sum of \$5,000.00 together with interest thereon at the rate of six per cent. (6%) per annum from December 14th, 1914, the date of the filing of the complaint herein to this date amounting to \$246.50.

And as a conclusion of law, the court finds that the plaintiff, Orchard Land & Timber Company, is entitled to judgment against the defendant, Maryland Casualty Company of Baltimore, for the sum of \$5246.50 besides the costs and disbursements of this action.

Let judgment be entered accordingly.

Dated this 18th day of October, 1915."

### JUDGMENT.

"This cause being at issue, and coming on regularly for trial hearing and determination, before the Court without a jury, (trial by jury being waived by written stipulation signed by the parties through their respective counsel, and filed), on the 11th day of October, 1915, and was tried on that day, upon the pleadings, proofs and arguments of the respective parties.

Charles A. Hardy, and Clark, Skulason & Clark, appeared as Attorneys for the plaintiff, and Wilbur, Spencer & Beckett, appeared as Attorneys for the defendant.

At the conclusion of said trial, the Court not then being fully advised in the premises, took said cause under advisement, and upon the 18th day of October, 1915, being then fully advised in the premises, the Court did render its decision in said cause in favor of the plaintiff,

Orchard Land & Timber Company, and against the defendant, Maryland Casualty Company of Baltimore, for the relief prayed for in the complaint:

NOW, THEREFORE, It is CONSIDERED, ORDERED AND ADJUDGED, that the plaintiff, Orchard Land & Timber Company, have and recover of and from the defendant, Maryland Casualty Company of Baltimore, the sum of \$5,246.50, and its costs and disbursements in this action, taxed and allowed at \$20.40, and that execution issue therefor.

Dated this 18th day of October, 1915."

That thereafter, and on the 13th day of November, 1915, the defendant prepared and served upon the attorneys for the plaintiff and caused to be filed a motion to set aside said judgment and for a new trial, in words and figures, as follows:

"The defendant moves the court for an order to set aside the judgment heretofore entered in the above entitled action, and for a new trial, upon the ground and for the reason:

## I.

Insufficiency of the evidence upon the trial to justify the findings of the Court, and the judgment entered thereupon.

## II.

That the Findings, Conclusions of Law and Judgment are against the law."

That thereafter, and on the 10th day of January, 1916, the defendant's motion to set aside the judgment



and for a new trial came on regularly to be heard, and the same was denied.

IT IS HEREBY CERTIFIED that "Exhibit X" heretofore referred to and made a part of this Bill of Exceptions contains a complete and accurate transcript of all the evidence and proceedings had upon said trial, and that said plaintiff's "Exhibit A" is the note referred to in the said testimony, given by the said Orchard Land & Timber Co., to O. W. Dunn in the sum of \$7602.60, and that said plaintiff's "Exhibit B" is the certified copy of the records of the Circuit Court Judgment Docket Lane County, State of Oregon, showing the satisfaction of the judgment in the case of O. W. Dunn vs. Orchard Land & Timber Company, which said exhibits are hereby referred to and identified and made a part of this bill of exceptions contains all of the evidence, exhibits and proceedings of every nature had upon said trial.

NOW, I, R. S. BEAN, District Judge in the United States District Court for the District of Oregon, and the Judge before whom the above entitled action was tried, being willing that a record shall be made and presented in order that the rulings and proceedings had upon said trial as aforesaid may be reviewed for error, if any there be, HEREBY CERTIFY that the foregoing Bill of Exceptions was duly served upon the plaintiff and presented to the court for allowance in the time and manner required by law and the rulings and order of this Court, and I FURTHER CERTIFY that this Bill of Exceptions, together with the transcript of all the evidence had upon said trial, and the said plaintiff's Exhibits A and B hereby referred to and made a part hereof



contains all and the whole of the record of the proceedings had upon said trial, and that said Findings of Fact and said Conclusions of Law and said motion to set aside the judgment and for a new trial, hereinabove set out, contains all the proceedings had in this case since the trial thereof.

**WHEREFORE**, the foregoing Bill of Exceptions having been duly examined by me, and found to conform to the evidence is hereby on this 3rd day of February, 1916, duly settled, certified, signed and allowed and made a part of the record of the proceedings on appeal in this case.

Affidavit and counter affidavit relative to the service of copies of the findings and judgment are hereto attached.

**R. S. BEAN,**

Judge.

**THIS CERTIFIES** that the foregoing Bill of Exceptions was duly presented this 28th day of January, 1916.

**G. H. MARSH,**

Clerk of the U. S. District Court for the District of Oregon.

*In the District Court of the United States for the  
District of Oregon.*

Orchard Land & Timber Company, a corporation.

*Plaintiff.*

vs.

Maryland Casualty Company of Baltimore,

*Defendant.*

Charles A. Hardy and Clark, Skulason & Clark,

Attorneys for Plaintiff.

S. C. Spencer

Attorney for Defendant.

R. S. BEAN, District Judge.

Portland, Ore., Monday, October 11, 1915.

Mr. Hardy: Will you admit the execution of the note?

Mr. Spencer: If you tell me you got it, I will admit it.

Mr. Skulason: Plaintiff now offers the note described in the complaint and asks that it be marked as an exhibit.

Note marked "Plaintiff's Exhibit A."

Mr. Skulason: Plaintiff also offers certified copy of the records of the Circuit Court Judgment Docket of Lane County, Oregon, showing a satisfaction of the judgment described in the complaint, in favor of O. W. Dunne, and against the plaintiff.

Marked "Plaintiff's Exhibit B."

PLAINTIFF RESTS.

Mr. Spencer: Mr. Hardy, I would like to ask you a few questions. It will not be necessary for you to take the stand. You were the plaintiff's attorney in this case, were you not, one of them? I mean Mr. Dunne's.

Mr. Hardy: I was the attorney for O. W. Dunne in the action of O. W. Dunne vs. the Orchard Land & Timber Company.

Mr. Spencer: And you had associated with you the firm of Clark, Skulason & Clark?

Mr. Hardy: No.

Mr. Spencer: What was that?

Mr. Hardy: I handled the case of O. W. Dunne against the Orchard Land & Timber Company. Tried that case in the Circuit Court and in the Supreme Court, and when I was employed by the Orchard Land & Timber Company in this case, I associated Clark, Skulason & Clark with me.

Mr. Spencer: After you obtained the judgment against the Orchard Land & Timber Company in the case of Dunne against that company, you then became the attorney for the Orchard Land & Timber Company?

Mr. Hardy: In this action.

Mr. Spencer: In this action. You were not able to collect your judgment against the Orchard Land & Timber Company?

Mr. Hardy: I don't know.

Mr. Spencer: Did you try?

Mr. Hardy: Why I issued an execution and had a notice to garnishee served upon the Maryland Casualty Company and that proceeding was dismissed.

Mr. Spencer: Do you know anything about the

financial condition of the Orchard Land & Timber Company?

Mr. Hardy: Well, yes, and no. I know some part of their—something about their financial condition.

Mr. Spencer: Is that company doing any business now?

Mr. Hardy: I don't know.

Mr. Spencer: None that you know of?

Mr. Hardy: Not that I know of.

Mr. Spencer: It is a company in your county?

Mr. Hardy: I think incorporated in this state with principal office at Cottage Grove.

Mr. Spencer: Was it a sawmill?

Mr. Hardy: Yes, operated a sawmill.

Mr. Spencer: And when you obtained this judgment for your client, O. W. Dunne, against the Orchard Land & Timber Company for over \$7,000, you naturally wanted your money.

Mr. Hardy: Mr. Dunne wanted his money.

Mr. Spencer: Well you incidentally wanted your part of it?

Mr. Hardy: Yes.

Mr. Spencer: And up to this date you haven't got any of that money?

Mr. Hardy: No.

Mr. Spencer: You remember about the case where you had execution served upon the Maryland Casualty Company, don't you—that part of the case?

Mr. Hardy: Oh, yes, I attended to that.

Mr. Spencer: You do recollect, do you not, that when you started to bring the Maryland Casualty Com-

pany into court down there in your home town, down in Lane County—Eugene, isn't it?

Mr. Hardy: Yes.

Mr. Spencer: You know that part of it to reach the Liability Company on that garnishment in the case of Dunne vs. Orchard Land & Timber Company, that part was removed here to the Federal Court. You know that, don't you?

Mr. Hardy: Certainly.

Mr. Spencer: Then do you remember that after this case was started a plea in abatement was filed, stating that the Orchard Land & Timber Company had not paid its license fees to the corporation department, and asking to have the case abated. Do you remember that proceeding?

Mr. Hardy: I was advised of that.

Mr. Spencer: Who paid up those fees?

Mr. Hardy: The Orchard Land & Timber Company procured its re-instatement, and the money was furnished for that purpose by myself.

Mr. Spencer: That is what I thought. When you took this note that has been introduced in evidence here for \$7602.60, in favor of O. W. Dunne, and signed by the Orchard Land & Timber Company—it is a ninety day note, isn't it?

Mr. Hardy: It shows on its face, yes.

Mr. Spencer: You never have collected that note, of course?

Mr. Hardy: Not yet.

Mr. Spencer: Never commenced any action to collect it?

Mr. Hardy: Not yet.

Mr. Spencer: And you don't know where you could collect, do you?

Mr. Hardy: Yes.

Mr. Spencer: From the Maryland Casualty Company?

Mr. Hardy: Well, I think that if the Orchard Land & Timber Company collects on this policy of insurance, that will be money that can be reached by the holder of this prommissory note.

Mr. Spencer: But you can't collect that note unless you can get the money from the Maryland Casualty Company on this policy?

Mr. Hardy: Not necessarily; there are two other possibilites of collecting.

Mr. Spencer: But you have made no effort to get this money out of any other asset of the Orchard Land & Timber Company, except that which you call an asset as against the Maryland Company?

Mr. Hardy: I don't know whether that is an asset. The fact remains, as I said, there has been no action commenced on this note.

Mr. Spencer: The object in taking this note was to make a foundation to sue the Maryland Company, wasn't it?

Mr. Hardy: The object of taking the note—well, one thing was to get some security.

Mr. Spencer: Is the note any better security than the judgment you had?

Mr. Hardy: Well, the note is secured.

Mr. Spencer: How is it secured?



Mr. Hardy: Well, that is secured by an assignment from the Orchard Land & Timber Company to Dunne of any judgment that the Orchard Land & Timber Company may recover in this action.

Mr. Spencer: When you took the note, whose attorney were you then, Dunne's or the Orchard Land & Timber Company's?

Mr. Hardy: Well, I took the matter up with Mr. Brainard, president of the Orchard Land & Timber Company, in the first instance, myself, and asked him if I could act for the Orchard Land & Timber Company in this matter, and I am acting for the Orchard Land & Timber Company and Mr. Dunne; am attorney for both of them.

Mr. Spencer: Both of them?

Mr. Hardy: With the understanding on the part of both of them.

Mr. Spencer: So the whole scheme was to get this note—while you were acting for Dunne—was to get this note and then get an assignment from the Orchard Land & Timber Company of any claim it had against the Maryland Casualty Company, so if it got this money

Mr. Hardy: I can answer that question best by saying Mr. Brainard told me he took this policy of insurance up for the benefit of his employes, and he wanted the Maryland Casualty Company to meet its obligations. And then I had the idea further—no concealment about it—that the Orchard Land & Timber Company would undoubtedly use some of this money, turning it over to Mr. Dunne paying this note.

Mr. Spencer: I think that is all, your Honor.

Mr. Skulason: You may state whether or not the Orchard Land & Timber Company, at the time you took this note and entered into this arrangement satisfied this judgment out of any other assets than those claimed from the defendant in this case.

Mr. Hardy: Well, as I understand the facts, about the time this judgment was obtained against the Orchard Land & Timber Company, and possibly while the appeal was pending, Mr. Brainard, who was the chief stockholder of the Orchard Land & Timber Company, organized the Brainard Lumber Company and the Brainard Lumber Company acquired the sawmill that the Orchard Land & Timber Company had been operating at the time Dunne received these injuries out of which this action grew, and there might be some further assets in the hands of the Orchard Land & Timber Company in the way of stock subscriptions, but I am not advised as to the facts about that. I can't say. I don't know what other claims they might have against—or any claims they might have along that line.

Mr. Skulason: What was this Brainard Lumber Company you speak of? What was its connection with the plaintiff in this case?

Mr. Hardy: The Brainard Lumber Company might be said to be the successor of the Orchard Land & Timber Company in the matter of the operation of the sawmill.

Mr. Skulason: That company then, as I understand it, took over the assets of the plaintiff in this case after its liability to Dunne had accrued?

Mr. Hardy: It took the sawmill, flume, machinery,

and the sawmill was on leased land. I understand it also took the lease.

Mr. Spencer: Did the Orchard Land & Timber Company go into bankruptcy? Do you know that?

Mr. Hardy: I am satisfied they did not.

Mr. Spencer: Were you ever attorney for the Orchard Land & Timber Company in any other transactions except this?

Mr. Hardy: Well, I had some business with Mr. Brainard in various transactions. I don't know just exactly where the Orchard Land & Timber Company ends and Mr. Brainard begins. I hardly think I was acting for the company.

Portland, Oregon, Monday, October 18, 1915.

R. S. BEAN, District Judge: (ORAL)

The case of the Orchard Land & Timber Company vs. the Maryland Casualty Company of Baltimore is an action to recover on an indemnity policy, by the terms of which the Insurance Company agreed to indemnify the plaintiff against loss or damage on account of injury to its employes. An employe was injured, sued the company, recovered a judgment and subsequently the plaintiff satisfied this judgment by giving its note to the injured party, and satisfied the judgment of record, and the question presented on this trial is whether this note and the satisfaction of the judgment amount to a payment within the meaning of the policy and entitle the plaintiff to recover, or whether it is necessary that it should pay the judgment in coin before it is entitled to recover in this action.

Now the authorities, as far as I have been able to examine them, indicate that where a note, as in this case, was given and received in payment of the judgment that it amounts to a payment within the meaning of the policy and entitles the plaintiff to recover, and such will be the finding in this case.

Plaintiff's Exhibit A.

\$7602.60

Cottage Grove, Ore., Nov. 11, 1914.

Ninety days after date, without grace, . . . promise to pay to the order of O. W. Dunn, Seventy Six Hundred two and 60-100 Dollars in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin at the rate of . . . per cent per annum, from date until paid, for value received. Interest to be paid—and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof. . . . promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

ORCHARD LAND & TIMBER CO.,

By C. D. Brainard, (Treas.)

By Alfred P. Dobson (Secy.)

PLAINTIFF'S EXHIBIT B.

Judgment Debtors	Judgment Creditors	Amount of Judgment	Date of Entry in Journal	When Docketed	Execution Issued	Appeal When Taken	Decision on Appeal	Satisfaction When Entered
Day	Month	Year	Day	Month	Year	Day	Month	Year
Orchard Land and Timber Company a Corporation. No. 8052 16-261	O. W. Dunn	Judgment \$7500.00 102.60	11 Nov. 1912	15 Nov. 1912	10 Jan. 1914		Reporters Fees assigned to Lane County. For notice of attorney's lien see File Book 2, Page 28.	Satisfaction in full this 16th day of Nov., 1914, except as to Reporters Fees assigned to Lane County. O. W. DUNN Attest: STACY M. RUSSELL



O. W. Dunne,

*Plaintiff,*

Against

The Orchard Land and Timber Company, a Corporation,  
tion,

*Defendants.*

*Clerk's Office, Circuit Court of the State of Oregon,  
County of Lane.*

*Plaintiff.*

Against

The Orchard Land and Timber Company, a corporation,

*Defendants.*

State of Oregon,

County of Lane,—ss.

I, Stacy M. Russell, County Clerk and Clerk of the Circuit Court of the State of Oregon, in and for Lane County, do hereby certify that I have compared the foregoing copy of judgment with the original, and that it is a correct transcript therefrom and all of the whole of such "Original Judgment" as the same appears of record in Circuit Court Judgment Docket Lane County, Oregon, No. 5, at Page 274, now in my official care and custody.

IN TESTIMONY WHEREOF I have hereunto set my hand and seal of said court this the 9th day of October, 1915.

(Seal)  
stamp

S. M. RUSSELL, Clerk.

C. D. LEE, Deputy Clerk.



*In the District Court of the United States for the  
District of Oregon.*

PROPOSED AMENDMENTS TO BILL OF  
EXCEPTIONS.

Orchard Land & Timber Company, a corporation,  
*Plaintiff.*

v.

Maryland Casualty Company, of Baltimore Maryland,  
a corporation,  
*Defendant.*

Comes now the plaintiff and proposes the following  
amendments to the Bill of Exceptions heretofore served  
upon the Attorneys for the plaintiff:

I.

That the name Charles A. Harding, wherever the  
same appears, be changed to Charles A. Hardy, the lat-  
ter being the true name of one of the Attorneys who  
appeared in the case for the plaintiff.

II.

That the following be inserted after the date of the  
judgment, at line 21, page 4 of the bill of exceptions:

“That on the 18th day of October, 1915, true and  
correct certified copies of said Findings and Judgment,  
were served by the Attorneys for plaintiff upon the At-  
torneys for the defendant, immediately after the signing  
and filing thereof, at their office in Portland, Oregon.

Said proposed amendments are based upon the files and records in said cause, and upon the affidavit of M. H. Clark, which is attached hereto.

CHAS. A. HARDY,  
CLARK, SKULASON & CLARK,  
Attorneys for Plaintiff.

*In the District Court of the United States for the  
District of Oregon.*

AFFIDAVIT.

Orchard Land & Timber Company, a corporation,  
*Plaintiff.*

v.

Maryland Casualty Company of Baltimore, Maryland,  
a corporation,  
*Defendant.*

State of Oregon,  
County of Multnomah,—ss.

I, M. H. Clark, being first duly sworn depose and say: That I am a member of the firm of CLARK, SKULASON & CLARK, and am one of the attorneys for the above named plaintiff; that on or about the 18th day of October, 1915, either the same day, or the day following the signing and entry of Findings and judgment in the above entitled cause, I delivered to the attorneys for the defendant, a copy of the Judgment and Findings; that said copy was either handed to the said Attorneys for the defendant, by me personally, or by me mailed to the said Attorneys for the defendant, on or

about the date mentioned, at their office in Portland, Oregon.

M. H. CLARK,

Subscribed and sworn to before me this 31st day of January, 1916.

(Seal)

H. G. DUNLAP,  
Notary Public for Oregon.

My Commission expires Oct. 16, 1916.

District of Oregon,  
County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 31st day of January, 1916.

S. C. SPENCER,  
Of Attorneys for Defendant.

*In the District Court of the United States for the  
District of Oregon.*

OBJECTIONS TO PROPOSED AMEND-  
MENTS TO BILL OF EXCEPTIONS.

Orchard Land & Timber Company, a corporation,  
*Plaintiff.*

vs.

Maryland Casualty Company, of Baltimore, Maryland,  
a corporation,

*Defendant.*

The defendant objects to Paragraph II of plaintiff's Proposed Amendments to Bill of Exceptions and asks

the Court to insert, in lieu of what the plaintiff asked, the following:

“That several days after the 18th day of October, 1915, upon the request of the defendant, plaintiff delivered to defendant true and correct certified copies of said Findings and Judgment.”

Said objection of defendant is supported by the affidavit of S. C. Spencer which is attached hereto.

WILBUR, SPENCER & BECKETT,

Attorneys for Defendant.

*In the District Court of the United States for the  
District of Oregon.*

AFFIDAVIT.

Orchard Land & Timber Company, a corporation,  
*Plaintiff.*

vs.

Maryland Casualty Company, of Baltimore, Maryland,  
a corporation,

*Defendant.*

State of Oregon,  
County of Multnomah,—ss.

I, S. C. Spencer, being first duly sworn, depose and say, that at some time after the 18th day of October, 1915, I heard that the Court had signed the Findings of Fact, Conclusions of Law and the Judgment in this case and that I communicated with the clerk of said Court and ascertained that this was so and that there-

upon I telephoned to M. H. Clark, one of the attorneys for the plaintiff, and asked him to furnish me with copies of said Findings of Fact, Conclusions of Law and Judgment, which he did at my request.

(Seal) S. C. SPENCER,

Subscribed and sworn to before me this 2nd day of February, 1916.

(Seal) F. C. HOWELL,  
Notary Public for Oregon.

My Commission expires Oct. 19, 1916.

United States of America,  
District of Oregon,—ss.

Due and timely service of the within objections to proposed amendments and the receipt of a duly certified copy thereof, all at the city of Portland in the said District of Oregon, is hereby admitted.

CLARK, SKULASON & CLARK,  
Attorney for Plff.

Bill of Exceptions filed February 3, 1916.

G. H. MARSH,  
Clerk.

And afterwards, to wit, on the 3rd day of February, 1916, there was duly filed in said court, and cause, a Praecipe for Transcript of record, in words and figures as follows, to wit;

**PRAECIPE FOR TRANSCRIPT.**

To the Clerk of the above entitled Court:

Please prepare and have printed in accordance with the law and rules of the court a transcript of record upon the writ of error in the above entitled cause, and include in said transcript the following:

Amended complaint.

Answer.

Reply.

Stipulation waiving jury trial.

Findings of Fact and Conclusions of Law and Judgment.

Motion for new trial.

Order denying motion for new trial.

Various orders extending time to file Bill of Exceptions.

Bill of Exceptions.

Petition for writ of error.

Assignments of error.

Order allowing writ of error and fixing supersedeas bond.

Writ of error.

Citation on Writ of Error.

Supersedeas bond.

**WILBUR, SPENCER & BECKETT,**

Atty's for Maryland C. Co.

Filed February 3, 1916. G. H. Marsh, Clerk.



United States of America,  
District of Oregon,—ss.

I, G. H. MARSH, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on writ of error in the case in which the Orchard Land & Timber Company, a corporation, is plaintiff and defendant in error, and Maryland Casualty Company, of Baltimore, Maryland, a corporation, is defendant and plaintiff in error, in accordance with the law and rules of the court and in accordance with the praecipe of said plaintiff in error, and that the said transcript is a full, true, and correct transcript of the record of proceedings had in said court in said cause in accordance with the said praecipe as the same appears of record on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript of record is \$. . . . . for clerk's fees for preparing the said transcript, and \$. . . . . for printing said transcript, and that the same has been paid by said plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this       day of       , 1916.

Clerk.

